

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
WEST VIRGINIA, AT MARTINSBURG**

DALE BERNARD BEARD, JR.,

Plaintiff,

v.

CIVIL ACTION NO.: 3:23-CV-193

HONORABLE GINA GROH

DANIEL E. SMITH, individually, and

ADAM ALBAUGH, individually,

Defendants.

AFFIDAVIT OF DEPUTY RYAN KOLB

I, Deputy Ryan Kolb, being over the age of eighteen and competent to testify to the foregoing facts do hereby declare and affirm the following to be true to the best of my knowledge:

1. On September 20, 2024, I gave a recorded statement to Keith Gamble at Pullin, Fowler, Flanagan, Brown & Poe, PLLC regarding my involvement in a traffic stop that took place on August 23, 2021.
2. A transcript of the recorded statement has been transcribed by Mr. Gamble's office.
(Attached as Exhibit 1)
3. I have reviewed the transcript of the recorded statement and the same is true and accurate to the recorded statement given to Mr. Gamble.
4. The contents of the recorded statement, and the transcript of the same, are true and accurate as I would testify to in open Court while under oath.

Exhibit E

Further affiant sayeth not.

Date: 28 Sept 2024

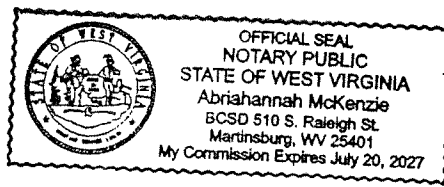
[Signature]
Deputy Ryan Kolb

STATE OF West Virginia

COUNTY OF Berkeley, to wit:

I hereby certify that on the 28 day of September, 2024, before me, the subscriber, a notary public of the State of West Virginia in and for the County of: Berkeley personally appeared Deputy Ryan Kolb and made oath in due form of law that the matters and facts set forth in the Affidavit are true. As witness, my hand and notarial seal.

(Notary Seal)



[Signature]
Signature of Notary Public Notary Public

My Commission expires: July 20, 2027

Beard v. Martinsburg Police Department

Civil Action No: 3:23-cv-193

Recorded Statement of Deputy Ryan Kolb

KG: Keith Gamble

RK: Deputy Ryan Kolb

- 1 KG: Today is September 20th of 2024, at 11:56. I'm here with Deputy Kolb in Martinsburg, WV. Sir, can
2 you state your name and occupation?
- 3 RK: Deputy Kolb, Berkeley County Sheriff's Office.
- 4 KG: Do I have permission to take a statement from you today?
- 5 RK: Yes, Sir.
- 6 KG: OK. And are you aware that I'm recording this statement?
- 7 RK: Yes, Sir.
- 8 KG: On August 23, 2021, where did you work?
- 9 RK: At the Berkeley County Sheriff's Office.
- 10 KG: And what was your job on the day in question of August 23, 2021?
- 11 RK: I was assigned to patrol, as well as our, with my canine.
- 12 KG: OK. And is that sometimes referred to maybe as a "canine handler"?
- 13 RK: Yes, Sir.
- 14 KG: OK. Did you have your canine with you that day?
- 15 RK: Yes, Sir.
- 16 KG: OK. And what is your canine's name?
- 17 RK: Canine Hugo.
- 18 KG: OK, so I'm going to refer to him as Hugo moving forward. What kind of dog is Hugo?
- 19 RK: He's a Belgian Malinois, dual purpose narcotic and apprehension dog.
- 20 KG: Do you receive training associated with using a K9 as an officer?
- 21 RK: Yes, Sir.
- 22 KG: Can you just generally explain your training with regard to being a canine officer?

23 RK: So, we have a six week handler course down at Summit Point, Garda World. We go through how
24 to handle the dog, how to read the dog, and other different training scenarios. And then upon
25 completion, we go through a national certification for narcotics, as well as a national certification
26 for apprehension and tracking.

27 KG: OK. How long have you been working with Hugo?

28 RK: I got him March of 2021.

29 KG: OK. Does the training that you just discussed, does that include training specifically for Hugo, as
30 well?

31 RK: Yes, Sir.

32 KG: OK, explain to me what Hugo is trained to do, if you would. I know you already said it, but if you
33 could just give me kind of a brief understanding of what he's trained to do.

34 RK: So he's trained to find narcotics; whether it's in a vehicle, an open area, a building, anywhere I
35 give him the command to find narcotics, he's trained to do so. He's also trained to apprehend
36 suspects, which in other terms means, you know, bite.

37 KG: OK.

38 RK: And he's also certified to track. So, if someone goes running away, we can track him using his nose.

39 KG: OK. Do you and Hugo have continuing training I'm assuming as partners, would you guys have
40 continuing training in addition to what you just explained to me?

41 RK: Yes, Sir. It's required to train 16 hours a month. So, we have training every other Thursday of the
42 month. Some days, some months we have more training than others. Sometimes we try to shoot
43 for over 16 hours.

44 KG: Okay. And you may have already said this, and if you did, I apologize. Are you and Hugo certified
45 by any agency to perform sniff checks of vehicles for the presence of narcotics?

46 RK: Currently, we're nationally certified through NAPWDA.

47 KG: Could you spell that? And it's an acronym,

48 RK: Correct.

49 KG: Right? Could you tell us, tell the recorder what that is? Just so we can get it.

50 RK: The National Working Police Dog Association, I believe.

51 KG: OK, when Hugo alerts during a traffic stop, what does that indicate to you, as an Officer?

52 RK: It means that one of the five substances that he's nationally certified to find, that he is in the
53 presence of that odor.

54 KG: OK. And what are those substances?

55 RK: Meth, heroin, cocaine, crack and PCP.

56 KG: When Hugo does alert, how do you know he's making an alert?

57 RK: So, his alert is a non-essential behavior that you know through training with Hugo. I recognize his
58 different ways that he alerts the vehicles. Some can include a head snap, so if he's going through
59 a car, he'll snap his head back. It's behavior that he doesn't realize he's doing, he just knows the
60 odor because the dog never loses an odor once they're trained in it, and then he's trained after
61 he is in that odor. he's trained to sit.

62 KG: He's trained to sit?

63 RK: Correct.

64 KG: OK. And I'm assuming that that behavior that you just discussed, that's based on training that
65 Hugo's undergone as well as you, I guess?

66 RK: Yes, Sir.

67 KG: Have your credentials in regards to being a canine handler and/or that of Hugo's ever been
68 challenged before in court?

69 RK: No, Sir.

70 KG: Has the use of Hugo's skills ever been excluded in court of law before due to lack of experience
71 and/or credentialing?

72 RK: No Sir,

73 KG: Has a court deemed Hugo sniff searches as unreliable or invalid on their face for any reason?

74 RK: No, Sir.

75 KG: Have you and or Hugo ever been deemed not qualified to make such determinations by Court of
76 Law?

77 RK: No, Sir.

78 KG: And I'm assuming you and Hugo have been permitted to testify in, well, I guess Hugo wouldn't
79 testify.... but you have testified in criminal cases regarding searches and or methods used for doing
80 the same?

81 RK: I have not personally testified with Hugo,

82 KG: Okay.

83 RK: but I've testified in Court

84 KG: Gotcha. And, and in regards to being a police officer and...

85 RK: Correct.

86 KG: Police work. I should, qualify.

87 RK: Yes.

88 KG: Were you and and I think you've already told me this, you and Hugo were working the day of
89 August 23rd, 2021.

90 RK: Yes, Sir.

91 KG: Do you recall being dispatched to a call for assistance from Defendant, Defendant Daniel Smith
92 with the Martinsburg Police Department?

93 RK: Yes, Sir.

94 KG: When you were dispatched, did you know who the suspect was?

95 RK: No, Sir.

96 KG: OK, when you arrived, just take me through kind of what happened once you arrived on scene.

97 RK: So, I arrived, got on scene, I talked to Smith. I said, "hey, what did you arrest him for?" He told me.
98 And I then got my dog out and started my free air sniff.

99 KG: OK. Did you know who the suspect was after you arrived?

100 RK: No, Sir.

101 KG: When you use Hugo in a traffic stop situation such as this, what do you call it when, when he's
102 doing what he does, what do you call it?

103 RK: Free air sniff.

104 KG: OK. And how is a canine free air sniff done?

105 RK: So, the way I do it, every handler is different with the way, where they start or how they, you know,
106 do the vehicle. I start usually, most of the time, on the driver's side, rear wheel well. Sometimes
107 I'll go to different locations based on where the wind's blowing. I like to start where the wind's
108 blowing towards us.

109 KG: So downwind?

110 RK: Correct, yes. And then I give him the search command. We move counterclockwise around the
111 vehicle, and the entire time I'm watching his behavior, watching for change of behaviors in him.
112 And then if he alerts on the vehicle, he's trained to sit.

113 KG: OK. During the open air sniff of Mr. Beard's vehicle, did Hugo Alert?

114 RK: Yes, sir.

115 KG: And what did that indicate to you?

116 RK: That he was in the odor of one of the narcotics he is nationally certified to find.

117 KG: OK. At that point, after Hugo had alerted, what legally would an officer such as yourself or some
118 other officer on scene have had the right to do?

119 RK: To search the vehicle.

120 KG: OK. And what is that called? What is the, what gives you that right, what?

121 RK: Probable cause.

122 KG: Prior to the statement that we're taking right now, we watched the body cam footage from
123 Defendant Smith in this matter, is that right?

124 RK: Yes. Sir.

125 KG: Did it accurately reflect the events that took place on August 23, 21 as you recall them?

126 RK: Yes. Sir.

127 KG: In in watching Defendant Smith's body camera, did you see Hugo alert?

128 RK: Yes, sir.

129 KG: OK. Why were you motioning? I noticed you were motioning with your hands during the open air
130 sniff. What-why were you doing that?

131 RK: So, I already observed canine Hugo alert on the passenger side of the vehicle. He sat and he stood
132 up and usually that's consistent with him trying to get closer to the source of the odor, um, but I
133 use my hand to detail the vehicle on all my searches, all my scans. So basically, I take my hand and
134 I present productive areas on the vehicle that the dog can't realize that are there to include,
135 include door seams if the window is open. Obviously, I'm not going to put him inside the window
136 at all, just enough for him to get up there, and if there's odor in the vehicle, he can get it easier.

137 KG: OK. Were you with those with the motions that we see your hands making, were you telling Hugo
138 to alert?

139 RK: No, Sir.

140 KG: OK, so am I correct that the body camera video that we watched shows Hugo alerts several times
141 prior to you making any motions by the car door?

142 RK: Yes, Sir.

143 KG: Is that accurate?

144 RK: That's accurate, yes sir.

145 KG: And just so we're clear, you were not telling Hugo or indicating to Hugo to sit or to alert, you were
146 doing what you just referred to as detailing the vehicle?

147 RK: Correct. He already alerted beyond that that point, so.

148 KG: And is it your, I would assume based on your training and experience, Hugo's alert was due solely
149 to his training?

150 RK: Yes, sir.

151 KG: And I may have asked you this already, but when Hugo alerted at the passenger side door, Mr.
152 Beard's vehicle, what did that indicate to you?

153 RK: That he was in the odor of one of the narcotics he's certified to find.

154 KG: OK. I noticed during the body Cam video, the officers had opened the doors but you had them
155 close the doors to Mr. Beard's vehicle. Is that right?

156 RK: Yes, Sir.

157 KG: Why did you do that?

158 RK: So, I don't want Hugo to be able to get inside the car and then it, would be a search. It's just like if
159 we were to go inside of his car without probable cause. At that point it would be invalid. So, I like
160 to keep them on the outside. That's why we call it a free air sniff. They have no rights to the air
161 surrounding their vehicle.

162 KG: Understood. I also noticed that the officers, Officer Smith and Officer Albaugh moved away from
163 the vehicle at the time of Hugo's open air sniff. Why was that?

164 RK: So, my dog, like I stated before, is a apprehension dog. I try to keep everyone away from the
165 vehicle for their safety. That way they don't get accidentally bit or get in the way of Hugo while
166 he's working.

167 KG: Did you in any way cause Hugo to alert with regard to Mr. Beard's vehicle?

168 RK: No, Sir.

169 KG: If someone indicated that you told Hugo to alert, that would be inaccurate?

170 RK: That's correct.

171 KG: In your training and experience, when Hugo alerts on a vehicle, what does that indicate to you
172 with regard to an ability to search or not search a vehicle?

173 RK: We would be able to search that vehicle.

174 KG: Am I correct, Hugo is not necessarily indicating there are illegal substances in in the vehicle, but
175 such, but that such substances could or had recently been present?

176 RK: That's correct.

177 KG: Did Defendants Smith or Albaugh give you any indication of what you should or shouldn't find
178 when you arrived on scene with Hugo?

179 RK: No, Sir.

180 KG: Did you observe the substances that were ultimately the grounds for charging Mr. Beard with
181 possession of illegal substances?

182 RK: Yes, Sir.

183 KG: OK. Did you disagree with Smith's or Albaugh's assessment with regard to if those substances could
184 be or were likely illegal substances?

185 RK: No, Sir, I even said it myself, it was, it appeared to be consistent with cocaine.

186 KG: OK. And again, that's based on your training and as experience as a police officer?

187 RK: Yes, Sir.

188 KG: Do you know if the substances tested were positive or otherwise for being illegal?

189 RK: I did not, no.

190 KG: When Hugo alerts, does he do so differently for different substances?

191 RK: No, Sir.

192 KG: So, when Hugo alerts, it's indicating that there are or were controlled substances in a vehicle, but
193 not, for example, specifically cocaine or specifically methamphetamines. His alert is the same for
194 any of the five substances he's trained for?

195 RK: So, his indication on the vehicle was a trained response to him sitting. So, he sits when he is in the
196 odor of that narcotic.

197 KG: Ok.

198 RK: There's different ways to train dogs on how to get your final response, but Hugo's training was to
199 sit once he's in that odor.

200 KG: OK, have I put words in your mouth in any way with regard to this statement?

201 RK: No, Sir.

202 KG: Have I told you what to say with regard to giving this statement?

203 RK: No, Sir.

204 KG: Have I turned the recorder off at any time during this statement?

205 RK: No, Sir.

206 KG: Do I have permission to turn the recording off now?

207 RK: Yes, Sir.

208 KG: And now it is 12:10, on September 20th, 2024.

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